

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL BUSINESS MACHINES  
CORPORATION,

Plaintiff,

v.

RODRIGO KEDE DE FREITAS LIMA,

Defendant.

20 Civ. 4573

**DECLARATION OF PIETRO J. SIGNORACCI IN SUPPORT OF  
INTERNATIONAL BUSINESS MACHINES CORPORATION'S  
APPLICATION FOR A TEMPORARY RESTRAINING ORDER  
AND A PRELIMINARY INJUNCTION**

PIETRO J. SIGNORACCI declares, under penalty of perjury, pursuant to  
28 U.S.C. § 1746, as follows:

1. I am admitted to practice before this Court and am associated with  
the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, attorneys for Plaintiff  
International Business Machines Corporation ("IBM") in this action. As such, I am  
personally familiar with the facts set forth herein. I respectfully submit this declaration in  
support of IBM's motion for a preliminary injunction and a temporary restraining order.

2. Attached as **Exhibit 1** is a true and correct copy of the Complaint  
in this action.

3. Attached as **Exhibit 2** is a true and correct copy of the Findings of  
Fact, Conclusions of Law, Preliminary Injunction and Order in *Microsoft v. Miszewski*,  
No. 11-2-04589-7 SEA (Wash. Super. Ct. April 15, 2011).

4. As alleged in the Complaint, the purpose of this litigation is to enjoin Defendant Rodrigo Kede de Freitas Lima, who was a senior executive at IBM until his resignation effective May 20, 2020, from violating his fiduciary and contractual obligations to IBM.

5. Mr. Lima gave notice to IBM on May 18, 2020 that he intended to accept an offer of employment with Microsoft Corporation (“Microsoft”). Mr. Lima stated that he intended to commence employment with Microsoft imminently.

6. On May 18, 2020, Mr. Lima informed IBM that he was represented by Robert Holtzman of Kramer Levin Naftalis & Frankel LLP in connection with Mr. Lima’s departure from IBM and his post-employment obligations to IBM.

7. On May 18, 2020, counsel for Microsoft informed counsel for IBM that James McQuade of Orrick, Herrington & Sutcliffe LLP would be representing Microsoft in connection with Microsoft’s offer of employment to Mr. Lima.

8. On May 22, 2020, in-house counsel for IBM and in-house counsel for Microsoft entered into a Standstill Agreement (the “Standstill Agreement”) by which Microsoft agreed that it would not permit Mr. Lima to commence employment with Microsoft prior to June 17, 2020, and all parties agreed not to commence litigation prior to June 10, 2020 and to provide 48 hours’ notice prior to commencing litigation in any forum.

9. A review of Mr. Lima’s IBM server mail revealed that Mr. Lima used a personal email address to receive IBM confidential documents on April 29, 2020, and that Mr. Lima used his IBM email address to access a third-party storage application.

10. On June 8, 2020, in-house counsel for IBM and in-house counsel for Microsoft agreed to amend the Standstill Agreement, with Microsoft agreeing that it would not permit Mr. Lima to commence employment with Microsoft prior to June 19, 2020, and all parties agreed not to commence litigation prior to June 15, 2020 and to provide 48 hours' notice prior to commencing litigation in any forum.

11. Over the course of the following week, counsel for IBM, counsel for Mr. Lima, and counsel for Microsoft participated in discussions regarding a potential resolution of this matter outside of court. These discussions did not lead to a resolution of the parties' disputes.

12. On June 13, 2020, at 10:18 a.m., in-house counsel for IBM provided the 48 hours' notice to all parties required by the Standstill Agreement by informing counsel for Mr. Lima and counsel for Microsoft, via email, that IBM would commence litigation in this Court as early as June 15, 2020 to enjoin Mr. Lima from violating his fiduciary and contractual obligations to IBM.

13. On June 14, 2020, in-house counsel for Microsoft stated via letter to in-house counsel for IBM that Microsoft would commit to delay Mr. Lima's employment with Microsoft until July 15, 2020. In-house counsel for Microsoft did not commit to delaying Microsoft's planned announcement on June 19, 2020, that Mr. Lima would join Microsoft as Corporate Vice President, Latin America prior to the expiration of his 12-month noncompetition period. On the same day, in-house counsel for IBM responded that without a change in Microsoft's position regarding that announcement, IBM would seek equitable relief to preserve the status quo.

14. IBM filed its Complaint in this action on Monday, June 15, 2020. I provided courtesy copies of IBM's as-filed Complaint and exhibits to counsel for Mr. Lima and counsel for Microsoft via email at 3:25 p.m. on the same day.

15. On Wednesday, June 17, 2020, the case was assigned to the Honorable Philip M. Halpern, United States District Judge. On the same day, the Court issued a Summons, which was served at 9:24 a.m. upon Mr. Lima via email to his counsel by agreement of the parties.

16. Pursuant to the Court's Local Rule 4.F, counsel for IBM conferred with counsel for Mr. Lima on June 17, 2020, regarding IBM's request for a temporary restraining order. Counsel for Mr. Lima did not consent to IBM's request for a temporary restraining order.

17. To my knowledge, no prior application for this or similar relief has been made in this or any other action.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Pietro J. Signoracci

Pietro J. Signoracci

Executed on June 17, 2020  
New York, New York